IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	**§**	
	§	
DIVERSIFIED SOLUTIONS, INC.	**§**	**CASE NO. 14-10069**
Debtor	**§**	**Chapter 11**
	§	

AMENDED EXPEDITED JOINT MOTION TO APPROVE COMPROMISE WITH GARNET ANALYTICS UNDER RULE 9019

****

If no timely response is filed by April 24, 2014, the relief requested herein may be granted without a hearing being held.

Expedited consideration of this motion has been sought. The Court has set the hearing on this motion for April 28, 2014 at 9:30 a.m. in Courtroom #1, United States Bankruptcy Court, Homer J. Thornberry Federal Judicial Building, 903 San Jacinto Blvd., Third Floor, Austin, Texas 78701.**

****

TO THE HONORABLE TONY M. DAVIS,
UNITED STATES BANKRUPTCY JUDGE:

Diversified Solutions, Inc., Debtor-in-Possession, and Garnet Analytics, Inc. ("Garnet") move this court to approve compromise and would respectfully show the Court as follows:

Summary

The Court's Order to Show Cause raised the possibility of the appointment of a Chapter 11 Trustee, conversion or dismissal. On April 7, 2014, the Debtor and Garnet met to explore a compromise of their disputes that would be approvable by this Court. The Debtor and Garnet have worked toward a compromise that would address the Court's concerns. The compromise being presented to the Court thus provides for dismissal case, but on terms that satisfy the claims of Garnet. The compromise easily meets the test of Rule 9019.

Jurisdiction and Venue

1. This Court has jurisdiction by virtue of 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1), (b)(2)(A), (B), and (O). The Court has authority to enter final orders granting the relief sought in this motion because the relief sought is sought pursuant to sections 105 of the Bankruptcy Code and Bankruptcy Rule 9019 – adjudicating public rights arising under the code.

2. Venue is proper in this District pursuant to 28. U.S.C. § 1408(1) because the Debtor's principal place of business has been located in this District for more than 180 days preceding the filing of this bankruptcy case.

Expedited Consideration

3. Expedited consideration is warranted under the balancing of the equities. Creditors face the hardship of delayed payment and the Debtor faces additional tax and administration costs if the compromise is delayed. There is no harm to the creditors from this compromise and their rights are not being affected. Indeed, this is a better result than the alternatives of conversion or dismissal listed in the Show Cause Order, which would provide no assurance of payment to anyone.

Factual Background

4. Garnet and the Debtor have been in litigation arising out of a business relationship that ended in 2012. In that litigation, Garnet obtained prejudgment relief against the Debtor pursuant to Connecticut law permitting Garnet to attach $2.188 million. The order authorizing this relief omitted several categories of damages that Garnet would claim in a final judgment; Garnet would contend that recoverable damages and interest would exceed $5 Million. A judgment including punitive damages under the Connecticut Unfair Trade Practices Act could

double or treble certain components of an award, resulting in a judgment potential in the range of $9 million.

5. As the Court noted on the record in a hearing in this matter on March 31, 2014, the Debtor has scheduled other non-insider claims totaling approximately $370,000. The rights of those creditors are not impaired by the approval of the Garnet settlement on the terms proposed, inasmuch asthe settlement is without prejudice for them to seek payment of their claims to the extent the Debtor fails to do so after dismissal.

6. In the wake of the Court's *Order to Show Cause*, representatives of Garnet and the Debtor met in New York on April 7, 2014, with their respective counsel.[1] A topic of universal concern was that Garnet's compromise must pass the scrutiny of this Court.

7. The efforts of Garnet and the Debtor over a long day of hard fought, arms-length negotiations resulted in a global agreement providing for compromise of the Garnet claim. The compromise reduces Garnet's claim from over $9 Million to a total below the $2.188 million already approved by the District Court in Connecticut as a prejudgment attachment. The compromise also includes mutual releases and ends the Connecticut litigation..

The Proposed Compromise and Settlement

8. To resolve the dispute the parties (in individual and corporate capacities) signed a term sheet (attached as **Exhibit A** to the original Motion). The Term provides for the following:

- Settlement is conditioned upon a Bankruptcy Court order approving the compromise and a separate Bankruptcy Court order dismissing the DSI's chapter 11 case..

[1] Mr. Butler appeared by phone, but Mr. Arcata represents the Debtor, Sol and Lundy in the Connecticut suit brought by Garnet and was present.

- $2,100,000.00 shall be paid to Garnet Analytics from Sol, Lundy and/or DSI upon entry of the bankruptcy court order dismissing (or abstaining from) the DSI Bankruptcy Case.
- After payment to Garnet, the Connecticut court case will be dismissed with prejudice and mutual releases will be given for and by all Parties and their affiliates.

9. The Court is also asked to authorize the Debtor to execute and deliver, perform under, consummate and implement any and all necessary settlement documents, together with all additional instruments and documents that may be reasonably requested or necessary or desirable to effectuate the compromise and/or implement the releases therein.

Relief Requested

10. By this Motion, pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019, the Debtor and Garnet request that the Court permit the Debtor to enter into the compromise set forth above on the estate's behalf.

Basis for Relief

A. Basis to Approve Compromise.

11. Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve compromises and settlements if they are "fair and equitable and in the best interest of the estate." *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997).

12. Indeed, "[t]o minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *Anderson*, 390 U.S. at 424 (1968) (citation omitted). Bankruptcy Code § 105(a) further provides that "[t]he court may issue any order . . . that is necessary or appropriate to carry out the provision of [the Bankruptcy Code]." The approval of a settlement pursuant to Bankruptcy Rule 9019 is committed to the bankruptcy court's discretion." *Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005). In analyzing a proposed settlement, courts seek to

determine "whether or not the terms of the proposed compromise fall within the reasonable range of litigation possibilities." *In re Energy Corp., Inc.*, 886 F.2d 921, 929 (7th Cir. 1989).

13. Thus, this Court need only conclude that the proposed settlement "falls within the reasonable range of litigation possibilities" somewhere "above the lowest point in the range of reasonableness." *In re Coram Healthcare Corp*., 315 B.R. 321, 330 (Bankr. D. Del. 2004) (approving settlement where success "not assured," difficulties in proposing plan absent settlement, and expense, inconvenience, and delay to all creditors.) (internal citations omitted); *see also, e.g., Official Unsecured Creditors' Comm. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.)*, 150 B.R. 595, 601-02 (E.D. Pa. 1992) (affirming bankruptcy court's approval of settlement despite debtor's "sketchy" analysis of cost, time and risk), *aff'd*, 8 F.3d 812 (3d Cir. 1993).

14. In fact, that litigation may arguably result in a better outcome does not render a settlement unreasonable. *Id.* at 603. Indeed, a court need not conclude that a settlement is the best possible compromise. *Id.* at 329-30. In deciding whether to approve a settlement, a court should also consider whether the issues to be litigated are complex and the results uncertain. *See In re Kaiser Aluminum Corp*., 339 B.R. 91, 96 (D. Del. 2006) (approving as reasonable a settlement of claims because "in the face of these complex and uncertain issues, it is difficult to envision who would succeed, but not difficult to envision complex, costly and time-consuming litigation"). Basic to evaluating proposed compromises or settlements is "the need to compare the terms of the compromise with the likely rewards of litigation." *TMT*, 390 U.S. at 425. This Court is not required, however, to hold a full evidentiary hearing before a compromise can be approved; rather, the Court's obligation is "to canvass the issues and see whether the settlement 'falls below the lowest point in a range of reasonableness.'" *In re Drexel Lambert Group, Inc.*, 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991).

15. Courts also typically adhere to the business judgment rule, giving "some deference" to a debtor's business judgment. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 291-92 (Bankr. D. Colo. 2006) (citing *Depo v. Chase Lincoln First Bank, N.A.*, 77 B.R. 381, 384 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir.1988)); *In re Buffalo Coal Co.*, No. 06-366, 2006 WL 3359585, at *3 (Bankr. N.D. W. Va. Nov. 15, 2006) ("A decision to compromise a claim is also reviewed under the business judgment test."); *see also GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd*., 331 B.R. 251, 254 (N.D. Tex. 2005) (finding that a court is to give "great judicial deference . . . to the [debtor's] exercise of business judgment"); *In re Cadkey Corp*., 317 B.R. 19, 22-23 (D. Mass. 2004) (finding that debtor's business decision should be approved unless it is manifestly unreasonable); *In re Bakalis*, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998) (debtor's business judgment enjoys "great judicial deference").

16. If Garnet were to proceed with the Connecticut litigation against the Debtor – which the Court has already authorized Garnet to do - the Debtor would continue to face a costly and complex defense, especially given the very difficult issues the Debtor would have to address at trial. As an initial matter, the estate simply does not have the funds to pursue lengthy litigation, and the proposed compromise with Garnet would not only resolve the estate's claims with little additional legal expense, it would also liquidate a claim with a far higher liability potential to the compromise amount of $2.1 million. The $2.1 million is less than the prejudgment remedy attachment amount of $2.188 million, which omitted certain punitive damage and interest components.

17. If the Debtor were required to litigate its claims against Garnet, in parallel with ongoing bankruptcy proceedings, the Debtor would also have to contend with the complex work of analyzing business and accounting records. There would potentially be additional fact discovery specific to the bankruptcy proceeding, as well as possible collateral litigation over

the attachment lien pursuant to the Connecticut prejudgment remedy statute notwithstanding the case authorities cited by Garnet that the attachment is not avoidable on any ground and gives rise to an enforceable and allowed secured claim. Even if the Debtor were to ultimately prevail in a challenge to the Connecticut attachment, the law on the subject is at best uncertain so the risk of appeal is significant. Given the costs involved, even if the Debtor prevailed in the end (which it in all probability does not have the funds to do), the victory would be Pyrrhic, at best.

18. Since Garnet holds the largest single claim against the Debtor by a significant margin, its settlement at a significantly reduced amount while other creditors retain all rights against the Debtor in the event their claims are not fully paid or settled after dismissal constitutes a compromise that is "fair and equitable and in the best interest of the estate." *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d at 355.

Notice is being Provided

19. Notice of this Motion has been or will be provided to the U.S. Trustee, the creditors on the Debtor's mailing matrix, any persons who have filed a request for notice pursuant to Bankruptcy Rule 2002, and any such other government agencies to the extent required by the Bankruptcy Rules and Local Rules. The Debtor submits that no further notice of this Motion is required.

Prayer

WHEREFORE, the Debtor and Garnet request that the Court enter an Order:

(1) Approving the compromise, including the execution of documents needed to further effectuate it; and,

(2) Granting such other and further relief as is proper.

Dated: April 11, 2014.

Respectfully submitted,

HUSCH BLACKWELL, LLP

/s/ Lynn H. Butler
Lynn Hamilton Butler, Esq.
State Bar No. 03527350
111 Congress Ave Ste 1400
Austin, TX 78701
Attorneys for the Debtor

And

PULLMAN & COMLEY, LLC

/s/ Christopher P. McCormack
By: Christopher P. McCormack
Irve J. Goldman
850 Main Street, P.O. Box 7006
Bridgeport, CT 06601-7006
Telephone: (203) 330-2000
Facsimile: (203) 576-8888
cmccormack@pullcom.com
igoldman@pullcom.com

Attorneys for Garnet Analytics, Inc.

and

McKOOL SMITH P.C.

By: */s/ Hugh M. Ray*
HUGH M. RAY, III
State Bar No. 24004246
600 Travis, Suite 7000
Houston, Texas 77002
Telephone: (713) 485-7300
Facsimile: (713) 485-7344

Attorneys for Garnet Analytics, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that on April 11, 2014 a true and correct copy of this document was served on all parties on the attached official service list by electronic means as listed on the Court's ECF noticing system, and by United States first class mail, postage prepaid at the address indicated.

/s/ Lynn H. Butler
Lynn Hamilton Butler

Label Matrix for local noticing
0542-1
Case 14-10069-tmd
Western District of Texas
Austin
Wed Apr 9 12:58:06 CDT 2014

Diversified Solutions, Inc.
8101 Avella Drive
Austin, TX 78729-4939

U.S. BANKRUPTCY COURT
903 SAN JACINTO, SUITE 322
AUSTIN, TX 78701-2450

Adam S. Mocciolo
Pullman & Comley
850 Main Street
Bridgeport, CT 06604-4988

Alison Marie Perry
Pullman & Comley
840 Main Street
Bridgeport, CT 06604

Amber Giles
5102 Doss Road
Austin, TX 78734-1209

American Express
Attn: Bankruptcy Division
P.O. Box 360002
Fort Lauderdale, FL 33336-0002

Anthem Blue Cross
P.O. Box 9051
Oxnard, CA 93031-9051

Audimation Services, Inc.
1250 Wood Branch Park Dr., Suite 480
Houston, TX 77079-1212

Brian J. Sol
P.O. Box 2472
Stateline, NV 89449-2472

CH Services, Inc.
11011 Domain Drive
Austin, TX 78758-7764

Christopher P. McCormack
Pullman & Comley
840 Main Street
Bridgeport, CT 06604

Cody Hobza
13008 Hymeadow Circle
Austin, TX 78729-1758

Dan Hernandez
2635 W. 45th
Austin, TX 78731-5941

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Diamond Aviation Services
3205 Paseo Vista
San Martin, CA 95046-9700

Earthnet, Inc.
4735 Walnut St., Suite F
Boulder, CO 80301-2553

Elizabeth Viveros
1175 Prussian Way
Oceanside, CA 92057-1840

Employment Development Department
State of California
Bankruptcy Unit - MIC 92E
P.O. Box 826880
Sacramento, CA 94280-0001

FedEx
Attn: Bankruptcy Div.
P.O. Box 7221
Pasadena, CA 91109-7321

Franchise Tax Board
Bankruptcy Section MS A340
PO Box 2952
Sacremento, CA 95812-2952

Franchise Tax Board
Bankruptcy Section, MS A-340
P.O. Box 2952
Sacramento, CA 95812-2952

Garnet Analytics, Inc.
324 Elm Street, Suite 103B
Monroe, CT 06468-2283

Garnet Analytics, Inc.
c/o Hugh M. Ray, III
McKool Smith PC
600 Travis Suite 7000
Houston, TX 77002-3018

Halloran & Sage LLP
Attn: Joseph J. Arcata, III, Esq.
One Goodwin Square
225 Asylum St.
Hartford, CT 06103-1516

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Kondler & Associates
6460 Medical Center St., Suite 230
Las Vegas, NV 89148-2421

Larry Conklin
1175 Prussian Way
Oceanside, CA 92057-1840

Lubich & Lubich
16375 Monterey Road, Suite N
Morgan Hill, CA 95037-5442

Lynn H. Butler
Husch Blackwell LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701-4093

Manaya Management, Inc.
P.O. Box 2472
Stateline, NV 89449-2472

Mark Astleford
15450 FM 1325 - Apt. # 1536
Austin, TX 78728-2838

Michael Lundy
8101 Avella Drive
Austin, TX 78729-4939

Moco Tax
3080 Bristol Street, Suite 110
Costa Mesa, CA 92626-3055

PM3 Consulting, Inc.
3220 Feathergrass Ct., 9106
Austin, TX 78758-7778

Patricia Menz
2207 Pasadena Dr., #9
Austin, TX 78757-2214

Premiere Global Services
P.O. Box 404351
Atlanta, GA 30384-4351

Secretary of State
State of California
1500 11th Street
Sacramento, CA 95814-5701

Secrtary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220-0001

Sourcive, Inc.
4255 Garlan Lane
Reno, NV 89509-5444

(p)CALIFORNIA STATE BOARD OF EQUALIZATION
ACCOUNT REFERENCE GROUP MIC 29
P O BOX 942879
SACRAMENTO CA 94279-0029

Texas Attorney General
Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548

(p)TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
REVENUE ACCOUNTING DIV - BANKRUPTCY SECTION
PO BOX 13528
AUSTIN TX 78711-3528

Texas Workforce Commission
Tax-Collections
101 E. 15th Street
Austin, TX 78778-0001

Tristan Scott Cowperthwait
Pullman & Comley
840 Main Street
Bridgeport, CT 06604

U.S. Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0009

(p)US BANK
PO BOX 5229
CINCINNATI OH 45201-5229

U.S. Department of the Treasury
Attn: Bankruptcy Dept.
Ogden, UT 84201-0001

Unified Services
2635 W. 45th
Austin, TX 78731-5941

United States Trustee - AU12
United States Trustee
903 San Jacinto Blvd, Suite 230
Austin, TX 78701-2450

Verizon
Attn: Bankruptcy Div
P.O. Box 920041
Dallas, TX 75392-0041

Verizon Wireless
Attn: Bankruptcy Div.
P.o. Box 660108
Dallas, TX 75266-0108

Wells Fargo Business Card
P.O. Box 54349
Los Angeles, CA 90054-0349

Williamson County Tax Assessor
904 South Main
Georgetown, TX 78626-5829

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Department of Treasury
Attn: Bankruptcy Div.
P.O. Box 105083
Atlanta, GA 30348

(d)Internal Revenue Service
Attn: Bankruptcy Division
P.O. Box 105078
Atlanta, GA 30348

(d)Internal Revenue Service
Attn: Bankruptcy Division
P.O. Box 105083
Atlanta, GA 30348

State Board of Equalization
State of California
Account & Analysis & Control Section
P.O. Box 942879
Sacramento, CA 94279

Texas Comptroller
c/o Susan Combs
P.O. Box 13528
Austin, TX 78711-3528

U.S. Bank
P.O. Box 790408
Saint Louis, MO 63179

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Brian J. Sol.
P.O. Box 2472
Stateline, NV 89449-2472

(d)Internal Revenue Service
PO BOX 7346
Philadelphia, PA 19101-7346

(d)Lynn H. Butler
Husch Blackwell LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701-4093

End of Label Matrix
Mailable recipients 53
Bypassed recipients 3
Total 56

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	
DIVERSIFIED SOLUTIONS, INC.	§	**CASE NO. 14-10069**
Debtor	§	**Chapter 11**
	§	

ORDER ON AMENDED EXPEDITED JOINT MOTION TO APPROVE COMPROMISE WITH GARNET ANALYTICS UNDER RULE 9019

On this day, the Court considered the Amended Expedited Joint Motion To Approve Compromise With Garnet Analytics Under Rule 9019 filed by Diversified Solutions, Inc., Debtor-in-Possession, and Garnet Analytics, Inc. ("Garnet").

This Court has jurisdiction by virtue of 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1), (b)(2)(A), (B), and (O). The Court has authority to enter final orders granting the relief sought in this motion because the relief sought is sought pursuant to sections 105 of the Bankruptcy Code and Bankruptcy Rule 9019 – adjudicating public rights arising under the code.

Venue is proper in this District pursuant to 28. U.S.C. § 1408(1) because the Debtor's principal place of business has been located in this District for more than 180 days preceding the filing of this bankruptcy case.

Notice of the Motion is adequate under the circumstances.

Upon review of the Motion, the exhibits attached to the Motion and arguments of counsel, the Court finds that the settlement terms set forth in the Motion are reasonably adequate for this Court, in the exercise of its discretion, to approve the Motion.

ACCORDINGLY, the Court GRANTS the Amended Expedited Joint Motion To Approve Compromise With Garnet Analytics Under Rule 9019.

The Court authorizes the Debtor to enter into the compromise set forth in the Motion on the estate's behalf.

The Debtor is authorized to execute and deliver, perform under, consummate and implement any and all necessary settlement documents, together with all additional instruments and documents that may be reasonably requested or necessary or desirable to effectuate the compromise and/or implement the releases therein.

###